



west virginia department of environmental protection

Division of Water and Waste Management
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Harold D. Ward, Cabinet Secretary
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**CONSENT ORDER
ISSUED UNDER THE
WATER POLLUTION CONTROL ACT AND GROUNDWATER PROTECTION ACT
WEST VIRGINIA CODE CHAPTER 22, ARTICLES 11 AND 12**

TO: West Virginia American Water
Chris Carew, Vice President of Operations
1600 Pennsylvania Avenue
Charleston, WV 25302

DATE: February 13, 2025

ORDER NO.: 10341

INTRODUCTION

This Consent Order is issued by the Director of the Division of Water and Waste Management (hereinafter "Director"), under the authority of West Virginia Code 22-11-1 et seq. and 22-12-1 et seq. to West Virginia American Water.

FINDINGS OF FACT

In support of this Order, the Director hereby finds the following:

1. Boone-Raleigh PSD previously operated a wastewater collection system and wastewater treatment plant located in Whitesville, Boone County, West Virginia. Boone-Raleigh PSD was reissued WV/NPDES Water Pollution Control Permit No. WV0086525 on September 24, 2018 and September 16, 2022.
2. On December 16, 2020, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection and record review of the facility. During the inspection, the following violations of the WV/NPDES permit and WV Legislative Rules were observed and documented:
 - a. Appendix A.II.1—Boone-Raleigh PSD failed to properly operate and maintain the facility. Specifically, the following deficiencies were identified:

- i. Pump Station Nos. One (1) and Three (3) had excessive grease.
 - ii. The control panel switch for the mechanical bar screen was turned off.
 - iii. The automatic fan and alarm for the chlorine gas room was not functioning.
 - iv. The contact chamber had poor clarity and excessive solids.
 - v. Sludge had not been pressed recently.
 - vi. The SBR control panel was not functioning properly.
- b. Appendix A.II.5—Boone-Raleigh PSD failed to appropriately dispose of solid waste. Specifically, there was solid waste on the concrete next to the mechanical bar screen and on the ground below the bar screen.
- c. Section A.001—Boone-Raleigh PSD's sample results from December 2019 to November 2020 showed excursions of permit limits.
- d. Section C.3—Boone-Raleigh PSD failed to have a certified Class II operator at the facility.
- e. 47CSR2 Section 3.2.a—Boone-Raleigh PSD caused conditions not allowable in waters of the State by creating distinctly visible settleable solids which were discharged from the outlet into Big Coal River.

As a result of the aforementioned violations, Notice of Violation (NOV) Nos. W20-03-332-ATL, W20-03-333-ATL, W20-03-334-ATL, W20-03-335-ATL and W20-03-336-ATL were issued to Boone-Raleigh PSD.

3. On November 30, 2021, WVDEP personnel conducted an inspection and record review of the facility. During the inspection, the following violations of the WV/NPDES permit and WV Legislative Rules were observed and documented:
- a. 47CSR2 Section 3.2.a—Boone-Raleigh PSD caused conditions not allowable in waters of the State by creating distinctly visible settleable solids which were discharged from the outlet into Big Coal River.
 - b. Appendix A.II.1—Boone-Raleigh PSD failed to properly operate and maintain all systems of treatment and control. Specifically, the following deficiencies were identified:
 - i. Pump Station Nos. One (1), Three (3), and Five (5) had excessive grease.
 - ii. The contact chamber had poor clarity and excessive solids.
 - iii. The SBR reactor closest to the river was not functioning properly.
 - iv. There was sludge buildup in baffles of both reactors.
 - v. The control panel was not functioning properly.
 - vi. There were no working generators at the plant or any of the lift stations.
 - vii. The chemical feeders were not operational.
 - viii. The automatic fan in the chemical storage room did not work.
 - c. Section C.21—Boone-Raleigh PSD failed to submit the Quarterly Inflow and Infiltration Reports for the 4th Quarter 2020 through the 3rd Quarter of 2021.
 - d. Section D.1—Boone-Raleigh PSD failed to submit the monthly Sewage Sludge Management Report as an attachment to the Discharge Monitoring Reports (DMRs) for the review period of December 2020 to October 2021.

- e. Section D.3—Boone-Raleigh PSD failed to submit the required semiannual Sewage Sludge Monitoring Reports for the review period of December 2020 to October 2021.
- f. Section A.001—Boone-Raleigh PSD failed to submit DMRs for January 2021 to October 2021 for the review period of December 2020 to October 2021.
- g. Section C.3—Boone-Raleigh PSD failed to have a certified Class II operator at the facility.

As a result of the aforementioned violations, NOV Nos. W21-03-032-SNB, W21-03-033-SNB, W21-03-034-SNB, W21-03-035-SNB, W21-03-036-SNB, W21-03-037-SNB and W21-03-038-SNB were issued to Boone-Raleigh PSD.

- 4. On August 3, 2022, the Public Service Commission (PSC) of West Virginia issued an Order associated with Case No. 21-0066-PSD-DU. As part of the Order, the PSC determined that Boone-Raleigh PSD was a failing facility, as defined in WV State Code 24-2H-3(b), because it had not stabilized its system or begun addressing its operational and financial deficiencies. The Order further stated that West Virginia American Water was the most capable proximate utility; therefore, West Virginia American Water was required to acquire Boone-Raleigh PSD.
- 5. On August 16, 2022, WVDEP personnel conducted an inspection of the facility. During the inspection, the following violations of the WV/NPDES permit and WV Legislative Rules were observed and documented:
 - a. 47CSR2 Section 3.2.a—Boone-Raleigh PSD caused conditions not allowable in waters of the State by creating distinctly visible settleable solids, which were discharged from the outlet into Big Coal River.
 - b. Section C.22—Boone Raleigh PSD discharged from an unpermitted point. Specifically, there was a discharge through the manhole just prior to Barker lift station. The station had been without electricity for two (2) days due to a fallen tree, and there was no source of auxiliary power.
 - c. Appendix A.II.1—Boone-Raleigh PSD failed to properly operate and maintain all systems of treatment and control. Specifically, the following deficiencies were identified:
 - i. The contact chamber had poor clarity and excessive solids.
 - ii. The SBR reactor closest to the river was not functioning properly.
 - iii. There was sludge buildup in baffles of both reactors.
 - iv. The control panel was not functioning properly.
 - v. There were no working generators at the Barker lift station.
 - vi. The chemical feeders were not operational.
 - d. Section C.21—Boone-Raleigh PSD failed to submit the Quarterly Inflow and Infiltration Reports for the 4th Quarter 2021 through the 2nd Quarter of 2022.
 - e. Section D.1—Boone-Raleigh PSD failed to submit the monthly Sewage Sludge Management Report as an attachment to the DMRs for the review period of November 2021 to June 2022.

- f. Section D.3—Boone-Raleigh PSD failed to submit the required semiannual Sewage Sludge Monitoring Report for the review period of November 2021 to June 2022.
- g. Section A.001—Boone-Raleigh PSD failed to submit DMRs for the review period of November 2021 to June 2022.

As a result of the aforementioned violations, NOV Nos. W22-03-125-MLA, W22-03-126-MLA, W22-03-127-MLA, W22-03-128-MLA, W22-03-129-MLA, W22-03-130-MLA and W22-03-131-MLA were issued to Boone-Raleigh PSD.

- 6. On July 7, 2023, WVDEP conducted a Compliance Evaluation Inspection. During the inspection, the following violations of the WV/NPDES permit and WV Legislative Rules were observed and documented:
 - a. Section D.1—Boone-Raleigh PSD failed to submit monthly Sludge Management Reports on the correct form.
 - b. Section C.21—Boone-Raleigh PSD failed to submit semiannual Inflow & Infiltration Reports.
 - c. Appendix A.II.1—Boone-Raleigh PSD failed to properly operate and maintain the facility. Specifically, the following deficiencies were identified:
 - i. There was sludge/solid waste in the reactor chamber baffles.
 - ii. There was sludge on the surface of the chlorine contact chamber.
 - iii. The belt press was not operational.
 - iv. There was sludge/solids in the Outlet No. 001 channel to the river.
 - v. There was overgrown brush around Outlet No. 001.
 - vi. The safety railing around the digester was rusted.
 - vii. There was grease/solids in lift stations 2, 2A, 3, 5, 7, and 8.
 - d. 47CSR58 Section 4.7.d—Boone-Raleigh PSD failed to store drums containing materials with potential to contaminate groundwater so that spills and leaks are contained. Specifically, chlorine and sodium bisulfite tanks were sitting on the ground next to the chemical feeders.
 - e. Section A.001—Boone-Raleigh PSD reported exceedances on submitted DMRs from July 2022 to July 2023.
 - f. Appendix A.III.2.c—Boone-Raleigh PSD failed to record the correct number of exceedances on DMRs.
 - g. Section C.23—Boone-Raleigh PSD failed to properly collect batch samples for DMRs.
 - h. Section D.12—Boone-Raleigh PSD failed to properly collect a composite sewage sample for Sludge Monitoring Reports.
 - i. Section D.5—Boone-Raleigh PSD failed to utilize the approved sludge disposal method. Liquid sludge was being hauled to the Nitro Regional Wastewater Utility treatment plant instead of being disposed of at the landfill.

As a result of the aforementioned violations, NOV Nos. W23-03-210-MLA, W23-03-211-MLA, W23-03-212-MLA, W23-03-213-MLA, W23-03-214-MLA, W23-03-215-MLA,

W23-03-216-MLA, W23-03-217-MLA, and W23-03-221-MLA were issued to Boone-Raleigh PSD.

7. On November 8, 2023, West Virginia American Water acquired the facilities of the Boone-Raleigh PSD. Due to the recent facility acquisition, West Virginia American Water requested entrance into an administrative consent order, which would allow West Virginia American Water to correct the aforementioned deficiencies in accordance with an approved plan and schedule. For that reason, West Virginia American Water submitted a plan of corrective action and schedule to WVDEP personnel. The plan of corrective action outlines action items and completion dates for how and when West Virginia American Water will achieve compliance with all terms and conditions of the facility's WV/NPDES permit and pertinent laws and rules. In the original plan of corrective action, West Virginia American Water described a "wet weather overflow" that had been identified by its engineers. However, WVDEP revised the plan of corrective action to correctly identify the discharge point as an unpermitted sanitary sewer overflow, because the facility is not permitted as a Combined Sewer System (CSS). The attached plan of corrective action was subsequently approved by WVDEP personnel.
8. On December 14, 2023, WV/NPDES Permit No. WV0086525 was transferred to West Virginia American Water.
9. On September 12, 2024, WVDEP personnel conducted a review of facility records from the time period of October 2021 through July 2024. During this review, the following violations of the terms and conditions of the WV/NPDES permit were observed:
 - a. Appendix A.III.2 – Sample results for Total Residual Chlorine were not reported on DMRs from January 2024 through July 2024.
 - b. Section A.001 - Twenty-nine (29) exceedances of permit parameters were observed and documented (Table 1). These exceedances can be further defined as:
 - i. Minor violations-Ten (10)
 - ii. Moderate violations-Five (5)
 - iii. Major violations-Fourteen (14)
10. West Virginia American Water represents that, prior to the entry of this Consent Order, it took numerous steps to improve compliance at the facility, including: cleaning basins and tanks, repairing disinfection systems, inspecting and cleaning lift stations, changing sludge hauling protocols and improving compliance sampling.

ORDER FOR COMPLIANCE

Now, therefore, in accordance with West Virginia State Code 22-11-1 et seq. and 22-12-1 et seq., it is hereby agreed between the parties, and ORDERED by the Director:

1. West Virginia American Water shall immediately take all measures to initiate compliance with all pertinent laws and rules and terms and conditions of the aforementioned WV/NPDES permit.
2. Upon the effective date of this Order, the attached plan of corrective action and schedule shall be incorporated into and become part of this Order. Failure to adhere to the approved schedule is a violation of this Order.
3. Within thirty (30) days of the effective date of this Order, West Virginia American Water shall submit for approval an interim plan of corrective action. The interim plan of corrective action shall include a detailed list of all available interim operation and maintenance measures that West Virginia American Water will undertake until such time when the long-term projects described in the attached approved plan of corrective action have been completed. The interim plan of corrective action shall make reference to WV/NPDES Permit No. WV0086525 and shall be submitted to:

**Chief Inspector
WVDEP Environmental Enforcement - Mail Code #031328
601 57th Street SE
Charleston, WV 25304**

Upon approval, the interim plan of corrective action and schedule shall be incorporated into and become part of this Order, as if fully set forth herein. Failure to submit an approvable interim plan of corrective action and schedule or failure to adhere to the approved schedule is a violation of this Order.

4. Upon the effective date of this Order, West Virginia American Water shall be provided the following interim discharge limitations for the permitted parameters that West Virginia American Water assumed due to its acquisition of Boone-Raleigh PSD's assets. All other limits included in WV/NPDES Permit WV0086525 will be in full force and effect. Interim limits shall expire fifteen (15) months after the effective date of this Order, at which time West Virginia American Water shall achieve compliance with all limits as detailed within the WV/NPDES permit.

Parameter	Units	Interim Limit
BOD, 5-Day 20 Deg.C	Avg. Monthly (mg/L)	Report Only
Total Suspended Solids	Max. Daily (mg/L)	75
Total Suspended Solids	Avg. Monthly (mg/L)	Report Only
Total Suspended Solids	Avg. Monthly (Lbs/Day)	Report Only
Ammonia Nitrogen	Max. Daily (mg/L)	30
Ammonia Nitrogen	Avg. Monthly (mg/L)	20
Ammonia Nitrogen	Avg. Monthly (Lbs/Day)	Report Only
Total Recoverable Copper	Avg. Monthly (mg/L)	Report Only
BOD % Removal	Monthly Avg. Min. (%)	75
Suspended Solids % Removal	Monthly Avg. Min. (%)	Report Only

OTHER PROVISIONS

1. West Virginia American Water hereby waives its right to appeal this Order under the provisions of West Virginia State Code 22-11-21 and 22-12-11. Under this Order, West Virginia American Water agrees to take all actions required by the terms and conditions of this Order and consents to and will not contest the Director's jurisdiction regarding this Order. However, West Virginia American Water does not admit to any factual and legal determinations made by the Director and reserves all rights and defenses available regarding liability or responsibility in any proceedings regarding West Virginia American Water other than proceedings, administrative or civil, to enforce this Order.
2. The Director reserves the right to take further action if compliance with the terms and conditions of this Order does not adequately address the violations noted herein and reserves all rights and defenses which he may have pursuant to any legal authority, as well as the right to raise, as a basis for supporting such legal authority or defenses, facts other than those contained in the Findings of Fact.
3. If any event occurs which causes delay in the achievement of the requirements of this Order, West Virginia American Water shall have the burden of proving that the delay was caused by circumstances beyond its reasonable control which could not have been overcome by due diligence (i.e., force majeure). Force majeure shall not include delays caused or contributed to by the lack of sufficient funding. Within three (3) working days after West Virginia American Water becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and West Virginia American Water shall, within ten (10) working days of initial notification, submit a detailed written explanation of the anticipated length and cause of the delay, the measures taken and/or to be taken to prevent or minimize the delay, and a timetable by which West Virginia American Water intends to implement these measures. If the Director agrees that the delay has been or will be caused by circumstances beyond the reasonable control of West Virginia American Water (i.e., force majeure), the time for performance hereunder shall be extended for a period of time equal to the delay resulting from such circumstances. A force majeure amendment granted by the Director shall be considered a binding extension of this Order and of the requirements herein. The determination of the Director shall be final and not subject to appeal.
4. Compliance with the terms and conditions of this Order shall not in any way be construed as relieving West Virginia American Water of the obligation to comply with any applicable law, permit, other order, or any other requirement otherwise applicable. Violations of the terms and conditions of this Order may subject West Virginia American Water to additional penalties and injunctive relief in accordance with the applicable law.
5. The provisions of this Order are severable and should a court or board of competent jurisdiction declare any provisions to be invalid or unenforceable, all other provisions shall remain in full force and effect.
6. This Order is binding on West Virginia American Water, its successors and assigns.

7. This Order shall terminate upon West Virginia American Water 's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.



Chris Carew, Vice President of Operations
West Virginia American Water

Feb. 24, 2025

Date

Public Notice begin:

Date

Public Notice end:

Date

Jeremy W. Bandy, Director
Division of Water and Waste Management

Date

PLAN OF CORRECTIVE ACTION

To achieve compliance with the terms of WV/NPDES Water Pollution Control Permit No. WV0086525, West Virginia American Water plans to take the following corrective actions by the compliance dates set forth below:

Corrective Action	Compliance Date
Implement Upgrades to the WWTP as recommended in the September 2022 Report Prepared by Ghosh Engineers attached as Exhibit A.	12 months from the Effective Date of Consent Order
Implement Upgrades to Pump Stations as recommended in the September 2022 Report Prepared by Ghosh Engineers attached as Exhibit A.	12 months from the Effective Date of Consent Order
Complete a study of the unpermitted sanitary sewer overflow identified by Ghosh Engineers and recommend course of action.	December 31, 2025
Implement the recommended course of action for the unpermitted sanitary sewer overflow, following approval by WVDEP	December 31, 2026
Elimination of the unpermitted sanitary sewer overflow	December 31, 2027
Meet Effluent Limits in WV/NPDES Water Pollution Control Permit No. WV0086525	15 months from the Effective Date of Consent Order

DMR Exceedance Summary

Responsible Party: West Virginia American Water

Date Range:	From:	10/1/2021	To:	7/31/2024
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AVG. MONTHLY							Degree of non-compliance		
Date	Outlet	Parameter	Units	Permitted avg. monthly	Reported avg. monthly	% Exceedance	Min	Mod	Maj
Aug-23	001	Total Recoverable Copper	mg/L	0.048	0.0688	43%	-	X	-
Jul-23	001	Total Recoverable Copper	mg/L	0.048	0.0678	41%	-	X	-
Jun-23	001	Total Recoverable Copper	mg/L	0.048	2.5	5108%	-	-	X
May-23	001	Total Recoverable Copper	mg/L	0.048	0.31	546%	-	-	X
Apr-23	001	Total Recoverable Copper	mg/L	0.048	5.1	10525%	-	-	X
Dec-22	001	Total Recoverable Copper	mg/L	0.048	3.1	6358%	-	-	X
Mar-23	001	Total Suspended Solids	mg/L	30	37	23%	X	-	-
Mar-23	001	Total Suspended Solids	lbs/day	50	83.9	68%	-	X	-
Apr-23	001	Total Suspended Solids	lbs/day	50	53.9	8%	X	-	-
Nov-23	001	Total Residual Chlorine	mg/L	0.028	0.39	1293%	-	-	X
Dec-23	001	Total Residual Chlorine	mg/L	0.028	0.38	1257%	-	-	X
Oct-23	001	Fecal Coliform	cnts/100mL	200	2098	949%	-	-	X
Nov-23	001	Fecal Coliform	cnts/100mL	200	5172	2486%	-	-	X

MAX. DAILY							Degree of non-compliance		
Date	Outlet	Parameter	Units	Permitted max. daily	Reported max. daily	% Exceedance	Min	Mod	Maj
Jun-23	001	Total Recoverable Copper	mg/L	0.096	2.5	2504%	-	-	X
May-23	001	Total Recoverable Copper	mg/L	0.096	0.31	223%	-	X	-
Apr-23	001	Total Recoverable Copper	mg/L	0.096	5.1	5213%	-	-	X
Dec-22	001	Total Recoverable Copper	mg/L	0.096	3.1	3129%	-	-	X
Nov-23	001	Total Residual Chlorine	mg/L	0.057	0.99	1637%	-	-	X
Dec-23	001	Total Residual Chlorine	mg/L	0.057	0.73	1181%	-	-	X
Oct-23	001	Fecal Coliform	cnts/100mL	400	2098	425%	-	X	-
Nov-23	001	Fecal Coliform	cnts/100mL	400	5172	1193%	-	-	X

Minimum 85% Removal - AVG. MONTHLY							Degree of non-compliance		
Date	Outlet	Parameter	Units	Permitted Minimum % Removal	Reported % Removal	% Exceedance	Min	Mod	Maj
Mar-23	001	BOD	%	85.0	62.4	26.6%	X	-	-
Feb-24	001	BOD	%	85.0	75.0	11.8%	X	-	-
Mar-24	001	BOD	%	85.0	78.4	7.8%	X	-	-
May-24	001	BOD	%	85.0	62.1	26.9%	X	-	-
Mar-23	001	Suspended Solids	%	85.0	69.1	18.7%	X	-	-
Nov-23	001	Suspended Solids	%	85.0	75.7	10.9%	X	-	-
Mar-24	001	Suspended Solids	%	85.0	73.1	14.0%	X	-	-
May-24	001	Suspended Solids	%	85.0	60	29.4%	X	-	-

Totals:	Degree of non-compliance		
	Min	Mod	Maj
	10	5	14